



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE-2015-BT-CRT-0013]

RIN: 1904-AD53

Energy Conservation Program: Exempt External Power Supplies Under the EPS Service Parts Act of 2014

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On November 18, 2015, the U.S. Department of Energy ("DOE") issued a notice of proposed rulemaking to exempt certain types of external power supplies consistent with the EPS Service Parts Act of 2014. That proposal, which serves as the basis for this final rule, explained that the Act exempted certain EPSs made available by a manufacturer as a service or spare part from the energy conservation standards promulgated in a February 2014 final rule. The proposal sought to codify this exemption and certain related reporting requirements. This rule adopts the November 2015 proposal along with related provisions to require manufacturers to annually report the total units of exempt EPSs shipped as service and spare parts that fail to meet the appropriate energy conservation standards.

DATES: The effective date of this rule is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The docket, which includes Federal Register notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at:

http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=23. This web page will contain a link to the docket for this rulemaking on the regulations.gov site. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: Brenda.Edwards@ee.doe.gov.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; “EPCA”

or, in context, “the Act”) sets forth a variety of provisions designed to improve energy

efficiency.¹ Part B² of Title III establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles.” External power supplies are among the products affected by these provisions.

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

Background

Section 301 of EISA 2007 established minimum energy conservation standards for Class A external power supplies ("EPSs") manufactured on or after July 1, 2008. (42 U.S.C. 6295(u)(3)(A)). See 42 U.S.C. 6291(36)(C)(i)-(ii). EISA 2007 exempts Class A EPSs from meeting these statutorily-prescribed standards if the devices were manufactured before July 1, 2015, and made available by the manufacturer as service parts or spare parts for end-use consumer products that were manufactured prior to July 1, 2008. (42 U.S.C. 6295(u)(3)(B)) Congress created this limited (and temporary) exemption as part of a broad range of amendments

¹ All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act, Public Law 114-11 (April 30, 2015).

² For editorial reasons, Part B was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified).

to EPCA under EISA 2007. The provision did not grant DOE with the authority to expand or extend the length of this exemption and Congress did not grant DOE with the general authority to exempt any already covered product from the requirements set by Congress.

After releasing a preliminary analysis and issuing a proposed set of energy conservation standards, DOE published a final rule prescribing new standards for non-Class A EPSs and amended standards for some Class A EPSs. See 79 FR 7846 (February 10, 2014). These new standards, commonly referred to as Level VI efficiency standards because EPSs subject to these standards are required to be marked with the Roman numeral VI according to the External Power Supply International Efficiency Marking Protocol, apply to products manufactured on or after February 10, 2016. When DOE published the rule, it did not have the authority to provide manufacturers with an exemption for EPSs manufactured after to the compliance date of these new standards if they were made available as service or spare parts to end-use consumer products. Accordingly, despite requests from some commenters who responded to DOE's proposed standards by asking for such an exemption, DOE could provide no such relief as part of that final rule.

On December 18, 2014, Congress enacted the EPS Service Parts Act of 2014 ("Service Parts Act"). That law exempted manufacturers of certain EPSs that are made available as service and spare parts for end-use products manufactured before February 10, 2016 from the energy conservation standards that DOE promulgated in its February 2014 rule. To be exempt under the Service Parts Act, an EPS must meet four separate criteria. Specifically, the EPS must be: (i) manufactured during the period beginning on February 10, 2016, and ending on February 10,

2020; (ii) marked in accordance with the External Power Supply International Efficiency Marking Protocol; (iii) compliant, where applicable, with the standards for Class A EPSs and certified to DOE as meeting at least International Efficiency Level IV; and (iv) made available by the manufacturer as a service part or spare part for an end-use product manufactured before February 10, 2016.

Additionally, the Service Parts Act permits DOE to require manufacturers of an EPS that is exempt from the 2016 standards to report to DOE the total number of such EPS units that are shipped annually as service and spare parts and that do not meet those standards. See 42 U.S.C. 6295(u)(5)(A)(ii). DOE may also limit the applicability of the exemption if the Secretary determines that the exemption is resulting in a significant reduction of the energy savings that would result in the absence of the exemption. See 42 U.S.C. 6295(u)(5)(A)(iii). Finally, the statute authorizes DOE to provide a similar exemption for EPSs from future energy conservation standards.

On November 18, 2015, DOE published a notice of proposed rulemaking ("NOPR") proposing to codify the provisions of the EPS Service Parts Act of 2014 within the Code of Federal Regulations ("CFR") and solicited comment from the public.. 80 FR 71984. As part of the NOPR, DOE sought comment on a number of specific issues including: how manufacturers produce spare or service parts as compared to how manufacturers produce EPS units provided with a new product, the specific language that should be codified regarding the exemption of certain EPSs sold as service or spare parts, and the reporting timeframe for importers and domestic manufacturers to report the total number of units sold in the prior year. DOE analyzed

all of the comments received from the list of commenters in Table I-1 in response to the 2015 NOPR and incorporated recommendations, where appropriate, into this final rule.

Table I-1 List of Commenters

Organization	Abbreviation
Appliance Standards Awareness Project, National Resources Defense Council, and American Council for an Energy Efficient Economy	ASAP, et al.
Association of Home Appliance Manufacturers, Consumer Electronics Association, Information Technology Council, and National Electrical Manufacturers Association	AHAM, et al.
Information Technology Council ³	ITI
California Investor Owned Utilities	CA IOUs

II. Synopsis of the Final Rule

DOE is incorporating the statutory provisions described in this preamble into its regulations. DOE is also providing some clarification on the circumstances under which EPSs would be considered spare or service parts. Lastly, DOE is requiring manufacturers who manufacture 1,000 or more exempt EPSs to annually report to DOE the total number of units of exempt EPSs shipped as service and spare parts that do not meet the 2016 standards.

III. Discussion

³ DOE notes that ITI also filed supplemental comments after the comment period had closed. These comments, which re-emphasized various points ITI had already made in its timely-filed joint comments with AHAM, were not considered by DOE in finalizing this rule due to their untimely nature.

A. Codifying the Exemption in the CFR

DOE is incorporating the provisions of the Service Parts Act into 10 CFR 430.32 to ensure that the regulations reflect the statutory exemption and that interested parties are able to readily access the content of this new statutory provision. Additionally, since the exemption from the Class A (Level IV) standards for certain EPSs that are made available as service and spare parts expired on June 30, 2015, DOE is also removing the text related to this now-expired exemption from 10 CFR 4320.32(w)(2), and replacing it with the new provisions of the Service Parts Act that exempt certain EPSs from the new and amended direct operation (Level VI) standards.

B. Service or Spare Part EPSs

In the NOPR, DOE explained that the Service Parts Act provides an exemption for certain EPSs that are made available by manufacturers as service or spare parts. DOE observed that most end-use products that use EPSs are sold with the EPS that is necessary to operate that product. DOE proposed that, in applying the statutory exemption, an EPS that is sold with an end-use product would not be considered to be a service or spare part. However, DOE noted that, in its view, any EPS sold separately from an end-use product, including an EPS made available as a replacement for, or in addition to, the EPS originally sold with an end-use product, would be considered an EPS made available as a service or spare part -- which would make that EPS potentially eligible to be exempt from the 2016 standards under the Service Parts Act.

To further clarify its application of this statutory exemption, DOE proposed that only those EPSs that are made available as service or spare parts for end-use products that were

manufactured before February 10, 2016 (the date that manufacturers must comply with the new and amended standards for direct operation EPSs) would qualify for the exemption. DOE proposed, accordingly, that if an EPS is made available as a service part or spare part for any end-use product that continues to be manufactured after February 10, 2016, or is sold with any end-use product manufactured after that date, that EPS would not be eligible for the exemption.

In the NOPR, DOE further recognized that many EPSs, like those that use an industry standard communication protocol, such as the universal serial bus ("USB"), may be capable of operating many different end-use products. To apply the statutory exemption to the “basic model” concept used in its regulatory scheme, DOE proposed that the exemption would apply to an EPS basic model that a manufacturer makes available only as a service part or a spare part for an end-use product that was manufactured before February 10, 2016, and would not apply to an EPS basic model that a manufacturer makes available as a service part or spare part for end-use products that continue to be manufactured after February 10, 2016. Thus, an EPS basic model would be exempt from the 2016 Level VI standard if, among other criteria, it is made available by the manufacturer only as a service part or a spare part for an end-use product, and only if the end-use product was manufactured before February 10, 2016. DOE sought comment on this proposal from stakeholders and interested parties.

ASAP, et al. supported DOE’s efforts to construct a narrowly-defined exemption for EPSs offered as service or spare parts to aid in limiting the sale of a larger number of EPSs than warranted by the intent of the law, stating that “abuse of the exemption could significantly reduce energy savings from the EPS standards.” (ASAP, et al., No. 2 at p.2) AHAM, et al. also

expressed support for DOE's proposal in their comments noting that "this is a sensible exemption that will allow manufacturers to maintain supplies of replacement parts for older equipment and will also allow warranty and contract compliance by manufacturers, as well as manufacturer compliance with state parts retention laws." (AHAM, et al., No. 3 at p.1)

Similarly, ASAP, et al. strongly supported DOE's interpretation that the exemption should not apply to EPSs made available as spare or service parts that are sold with products manufactured after February 10, 2016. ASAP, et al. asserted that the redesign of EPSs for products manufactured afterward is justified because an EPS that is sold with a product manufactured after February 10, 2016, would already be required to meet the new standards, and thus it does not create undue burden on industry to ensure that EPSs made available as spare or service parts for those same end-use products also comply with the new standards. (ASAP, et al., No. 2 at p.3) The CA IOUs agreed that any spare or service EPS for products manufactured after the compliance date should comply with the 2016 standards because redesigning an EPS or designing a substitute EPS to comply with the standards would not be a significant burden for manufacturers to meet. (CA IOUs, No. 5 at p.2) The CA IOUs also supported DOE's interpretation that the exemption would not apply to EPSs that are sold as spare or service parts but are capable of operating end-use products manufactured both before and after the compliance date. In their collective view, meeting the 2016 standard would not be an undue burden for manufacturers to meet. (CA IOUs, No. 5 at p.2)

ITI disagreed. In its view, the Service Parts Act exemption should apply to all EPSs made available as spare or service parts for end-use products manufactured prior to the 2016

compliance date. (ITI, No. 4 at p.1) It argued that DOE's proposed clarification would deny this exemption to many USBs and other EPSs capable of operating multiple end-use products contrary to the required exemption of the Service Parts Act. ITI further claimed that the apparent reduction in scope of the exemption provides insufficient notice to manufacturers as they were anticipating the exemption to reflect what they believed would be the clear language and scope of the enacted law. (ITI, No. 4 at p.2)

In the NOPR, DOE misstated in one place that, if an EPS is *capable* of operating multiple end-use products, some of which were manufactured before February 10, 2016, and some of which were manufactured after February 10, 2016, then that EPS would not be eligible for the service and spare part exemption since the EPS can operate an end-use product manufactured after February 10, 2016. 80 FR at 71986. DOE understands that this statement in the preamble may have caused confusion. The exemption as DOE proposed in the NOPR, would apply to an EPS basic model that is “*made available* by the manufacturer only as a service part or a spare part for an end-use product.” *Id.* at 71990 (emphasis added). DOE clarifies, and this rule establishes, that an EPS that is *capable* of operating end-use products manufactured on or after February 10, 2016, could be exempt, provided that the manufacturer makes the relevant basic model available only as a service part or spare part for end-use products manufactured before February 10, 2016.

Given the nature of DOE’s regulatory scheme, under which the non-compliance of a product is determined on a basic model, not unit-by-unit, basis, this final rule offers a reasonable approach in applying the Service Parts Act's exemption. See 10 CFR 429.114. Applied

otherwise, a basic model of EPS would be wholly exempt (i.e., all units of the basic model) from the Level VI standard based solely on the fact that as few as one unit of the basic model was made available by the manufacturer as a service part or a spare part for an end-use product manufactured before February 10, 2016. DOE declines to adopt an interpretation of the statutory exemption that would offer a blanket exemption to such a basic model.

Therefore, DOE is finalizing its proposal that this exemption would apply to an EPS basic model that a manufacturer makes available only as a service part or a spare part for an end-use product that was manufactured before February 10, 2016, and would not apply to an EPS basic model that a manufacturer makes available as a service part or spare part for end-use products that continue to be manufactured after February 10, 2016.

C. Sales Reporting Requirements

The Service Parts Act permits DOE to require manufacturers of an EPS that is exempt from the 2016 standards to report to DOE the total number of such EPS units that are shipped annually as service and spare parts and that do not meet those standards. See 42 U.S.C. 6295(u)(5)(A)(ii). DOE stated that it considered the “shipments” referred to in the statute to be those units sold by either the importer or the domestic manufacturer, and that because importers could have both incoming and outgoing shipments, DOE considered “units sold” to be clearer than “units shipped.” See 42 U.S.C. 6291(12) (under EPCA, “manufacture” means “to manufacture, produce, assemble or import”).

Accordingly, consistent with the Service Parts Act, DOE proposed that importers and domestic manufacturers of EPSs that are exempt under the Service Parts Act would be required to report annually to DOE the total number of exempt EPS units that were sold during the most recent 12-calendar-month period ending on July 31 that do not meet the 2016 standards. 80 FR at 71986. DOE received no comments specifically with regard to the use of the word “sold” as opposed to “shipped” in this context, and will use the word “sold” in its reporting requirement, as proposed in the NOPR.

DOE explained in the NOPR that many of the EPSs sold as spare and service parts are Class A EPSs and they continue to be subject to the current Class A EPS standards (*i.e.* Level IV) set forth in 10 CFR 430.32(w)(1)(i). As such, manufacturers of any basic model of a Class A EPS must already submit an annual certification report to DOE. See 10 CFR 429.12. Moreover, the Service Parts Act requires that an EPS must be certified to DOE as meeting Level IV standards in order to qualify for the exemption. Therefore, DOE proposed that each manufacturer of exempt Class A EPSs include in its annual report certifying compliance with Level IV standards the number of units of each individual model of such EPS it sold in the preceding year that do not meet the Level VI standards.

Similarly, DOE proposed to require each importer or domestic manufacturer of non-Class A EPSs that are exempted by the Service Parts Act and do not meet the 2016 standards to submit an annual report of the corresponding number of units of each individual model of such EPS that the importer or domestic manufacturer sold in the prior year. These non-Class A EPSs include multiple-voltage EPSs, high-power EPSs, and some EPSs used to operate end-use products that

are motor-driven. Under DOE's February 2014 final rule, non-Class A EPSs, unless exempt, are required to meet the Level VI standards starting in 2016. These non-class A EPSs would not be certified under the provisions of 10 CFR 429.12 (General requirements applicable to certification reports), if they are exempt, but under DOE's proposal, manufacturers of these EPSs would be required to submit a report including the number of exempt EPSs sold.

Separately, the Service Parts Act authorizes DOE to limit the applicability of the service and spare part exemption if DOE determines that the exemption is resulting in a significant reduction of the energy savings that would otherwise result from the final rule. See 42 U.S.C. 6295(u)(5)(A)(iii). Having information regarding the number of exempt units sold would aid DOE in making this determination.

ASAP, et al. noted that reporting is vital to DOE's ability to assess the impact of the EPS Service Parts Act of 2014 on the energy savings projected by the 2014 standards and supported DOE's proposal to extend the reporting requirements to non-Class A EPSs that are subject to federal efficiency standards. (ASAP, et al., No. 2 at p.3) The CA IOUs also supported DOE's proposals, noting that ensuring applicable EPS units that are subject to current efficiency requirements continue to meet these standards would prevent potential backsliding and an accompanying loss of energy savings. The CA IOUs also strongly supported having domestic manufacturers and importers report to DOE the total number of exempt EPS units sold on an annual basis to help ensure that energy savings from the 2014 standards are realized. (CA IOUs, No. 5 at p.2)

AHAM, et al., however, expressed concern over DOE's reporting requirement proposals. AHAM, et al. noted that most companies have low shipment volumes of spare and service parts for products manufactured prior to the compliance date and that the cost of reporting these data would outweigh the data collection efforts on a per model basis. Alternatively, AHAM, et al. recommended that DOE modify its reporting requirements to simplify the requirements to one report per manufacturer rather than one report per model and only require a report submission if the quantity of service and spare part EPSs exceeds 1,000 units. (AHAM, et al., No. 3 at p.2) AHAM, et al. concluded by stating its belief that the reporting requirements proposed by DOE exceed the authority granted by the EPS Service Parts Act of 2014 and recommended that the reporting requirements be limited to unit shipment volumes as permitted under the Service Parts Act. (AHAM, et al., No. 3 at p.3)

Reporting requirements in this instance serve a variety of important and useful roles, among which include helping DOE assess the impacts of the Service Parts Act's exemption on overall national energy savings. Notwithstanding this fact, DOE recognizes that reporting requirements may create a burden and has modified its proposal from the NOPR to allow manufacturers or domestic importers to report the total annual number of exempt EPSs sold as spare or service parts rather than requiring individual reporting on a per model basis, as suggested by AHAM. Under DOE's revised reporting methodology, manufacturers or importers would only need to track and report the total number of exempt EPSs sold.

DOE also recognizes the reporting burdens for manufacturers that sell only a small number of exempt units. Accordingly, consistent with the authority provided to DOE by the

Service Parts Act, DOE will adopt AHAM's suggestion and relieve manufacturers from the sales reporting requirements contained in this final rule provided that the quantity of exempt service and spare part EPSs sold by that manufacturer does not exceed 1,000 units annually. This 1,000 unit threshold will apply to the total number of exempt EPSs sold annually by that manufacturer (including importers) in aggregate and not on a per model basis. Consequently, a manufacturer would not be exempt from the reporting requirements if it sells more than one exempt model of EPS, each of which it sells less than 1,000 of annually, but, in aggregate, the total number of exempt EPSs sold by that manufacturer exceeds 1,000 across all models. DOE is modifying the regulatory text in the CFR to reflect this approach.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget ("OMB") has determined that certification rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis ("IFRA") for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order

13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://energy.gov/gc/office-general-counsel>.

For manufacturers of EPSs, the Small Business Administration ("SBA") has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System ("NAICS") code and industry description and are available at <http://www.sba.gov/content/summary-size-standards-industry>. EPS manufacturing is classified under NAICS 335999, “All Other Miscellaneous Electrical Equipment and Component Manufacturing.” The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category. As a preliminary matter, DOE notes that there are no domestic manufacturers of EPSs. Consequently, there are no small business impacts to evaluate for purposes of the Regulatory Flexibility Act.

Notwithstanding the absence of domestic EPS manufacturers, DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule would incorporate into DOE's regulations a

statutorily-prescribed exemption affecting EPSs that manufacturers make available as service or spare parts. The exemption allows manufacturers to maintain and distribute supplies of replacement parts for older equipment without needing to meet the EPS energy conservation standards that have applied since February 10, 2016. This exemption provides manufacturers with flexibility in meeting their warranty and contract obligations in cases where service or spare parts require an EPS. It also relieves manufacturers of the burdens of redesigning and certifying EPSs used for end-use products that are no longer manufactured, which DOE anticipates will save these manufacturers from any significant expenses that would otherwise be used solely to support products that are no longer in production. As for the reporting requirements, DOE is, consistent with comments received from industry participants, adopting an approach that requires only manufacturers who sell 1,000 or more exempt EPSs to report its shipped units -- an amount that will considerably lessen any small business-related impacts.

Consistent with its prior incorporation of the previous statutory exemption added by Congress for Class A EPSs made available as service and spare parts, see 10 CFR 430.32(w)(2) (2015), DOE expects any potential impact from its requirement to be minimal.

For these reasons, DOE certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rule revises an existing information collection. This information collection request contains:

- (1) OMB Control Number: 1910-1400.
- (2) Information Collection Request Title: Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, and Recordkeeping for Consumer Products and Commercial/Industrial Equipment Subject to Energy or Water Conservation Standards.
- (3) Type of Request: Revision of a Currently Approved Collection.
- (4) Purpose: This notice will require external power supply manufacturers to report the number of exempt EPS units sold as part of the annual certification report, which is already required. The annual certification report must be submitted via CCMS, an electronic system for recording and processing certification submissions.

Manufacturers of EPSs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for EPSs including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including external power supplies. See 10 CFR part 429, subpart B. The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). This requirement has been approved by OMB under OMB Control Number 1910-1400. Public reporting burden for the proposed certification requirement is estimated to average 30 hours per response, including the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In this final rule, DOE is finalizing requirements for external power supply manufacturers to provide the total number of exempt EPS units sold as service and spare parts for which the manufacturer is claiming exemption from the current standards. The following are DOE's estimates, revised from the value originally proposed in the NOPR, of the time for manufacturers to collect, organize and store the data required by this final rule. As part of this final rule, manufacturers will not be required to provide the total number of exempt EPS units sold for each basic model, and instead will only provide the total number of exempt EPSs sold by that manufacturer. Additionally, manufacturers who sell under 1,000 exempt EPSs will be exempt from reporting requirements. Accordingly, DOE anticipates the impact in burden hours will be reduced from the estimates provided in the NOPR. DOE has increased the cost estimate for the NOPR to a fully burdened labor rate of \$100 per hour, consistent with other certification requirements, to account for any skilled labor that may be required. DOE has revised its burden estimates to be consistent with the amendments being adopted in this final rule for reporting. DOE is showing the burden estimates for the individual amendments being adopted today and for the information collection as a whole.

Affected Public with respect to this final rule: Manufacturers of external power supplies that are claiming the spare parts exemption.

Estimated Number of Impacted Manufacturers: 228

Estimated Time per Record: 4 minutes

Estimated Total Annual Burden Hours: 15.2 hours

Estimated Total Annual Cost to Manufacturers: \$1520

After adding the values for this final rule to the existing information collection requirements, the following totals reflect the information collection as a whole:

(5) Annual Estimated Number of Respondents: 2000

(6) Annual Estimated Number of Total Responses: 20,000

(7) Annual Estimated Number of Burden Hours: 68,015.2 hours

(8) Annual Estimated Reporting and Recordkeeping Cost Burden: \$6,801,520

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this final rule, which would incorporate a recently-enacted exemption into the CFR for EPSs sold as spare or service parts, falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule would adopt changes to the manner in which certain covered equipment would be certified and/or reported, which would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is

covered by Categorical Exclusion A6 (Procedural Rulemaking) under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal

governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action

under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the existing certification requirements for EPSs sold as spare parts is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Public Law 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission ("FTC") concerning the impact of the commercial or industry standards on competition. This proposal to

amend the certification requirements for all covered consumer products does not propose the use of any commercial standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and record keeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 6, 2016.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

**PART 429--CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR
CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291-6317.

2. Section 429.37 is amended by adding paragraphs (b)(3) and (c) to read as follows:

§429.37 External power supplies.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report for external power supplies that are exempt from the energy conservation standards at §430.32(w)(1)(ii) pursuant to §430.32(w)(2) of this chapter must include the following additional information if, in aggregate, the total number of exempt EPSs sold as spare and service parts by the certifier exceeds 1,000 units across all models: The total number of units of exempt external power supplies sold during the most recent 12-calendar-month period ending on July 31, starting with the annual report due on September 1, 2017.

(c) *Exempt external power supplies.* (1) For external power supplies that are exempt from energy conservation standards pursuant to §430.32(w)(2) of this chapter and are not required to be certified pursuant to §429.12(a) as compliant with an applicable standard, the importer or domestic manufacturer must, no later than September 1, 2017, and annually by each September

1st thereafter, submit a report providing the following information if, in aggregate, the total number of exempt EPSs sold as spare and service parts by the importer or manufacturer exceeds 1,000 units across all models:

- (i) The importer or domestic manufacturer's name and address;
 - (ii) The brand name; and
 - (iii) The number of units sold during the most recent 12-calendar-month period ending on July 31.
- (2) The report must be submitted to DOE in accordance with the submission procedures set forth in § 429.12(h).

PART 430--ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

4. Section 430.32 is amended by revising paragraph (w)(2) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(w) * * *

(2) A basic model of external power supply is not subject to the energy conservation standards of paragraph (w)(1)(ii) of this section if the external power supply—

- (i) Is manufactured during the period beginning on February 10, 2016, and ending on February 10, 2020;

(ii) Is marked in accordance with the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016;

(iii) Meets, where applicable, the standards under paragraph (w)(1)(i) of this section, and has been certified to the Secretary as meeting those standards; and

(iv) Is made available by the manufacturer only as a service part or a spare part for an end-use product that—

(A) Constitutes the primary load; and

(B) Was manufactured before February 10, 2016.

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